pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314. The Court explained:

> [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .

Id. at 315. This Court has "regularly turned to [*Mullane*] when confronted with questions regarding the adequacy of the method used to give notice," *Dusenbery v. United States*, 534 U.S. 161, 168 (2002), and "has adhered unwaiveringly to the principle announced in *Mullane*." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 797 (1983).

Petitioner recognizes that the *Mullane* due process standard does not invariably require *actual* notice before property interests may be extinguished. Determining what is reasonable "under all the circumstances" requires an inquiry into the efforts made by the State in attempting to effect notice, the likelihood that additional efforts would provide notice, and the burden of making additional efforts in light of the value and importance of the property interest at stake. Part A below shows that, under this Court's precedents, when mailed notice is returned undelivered, the State has a duty to take further reasonable steps to locate the addressee so that it can provide him with notice that the State proposes to deprive him of his property. Part B demonstrates that simple, inexpensive, and effective additional means of notifying Mr. Jones were readily available to the State, and that the property interest at issue—Mr. Jones's

$80,000 house—was one deserving of considerable due process protection. Finally, in Part C, petitioner explains that the State's conduct after return of the first mailed notice did not discharge its due process obligations.

A. The Return Of Mailed Notice Triggers A Duty To Take Further Reasonable Steps To Inform The Interested Party.

It may have been reasonable for the State first to attempt to notify Mr. Jones by certified mail sent to the Bryan Street address. However, the circumstances changed when the first certified letter was returned to the State unopened. Once the State knew that Mr. Jones had not received the certified letter, the State had an obligation to take further reasonable steps to attempt to provide effective notice.

In a series of cases beginning with *Mullane*, the Court has endorsed the use of mail as a means of providing notice where the interested party's name and address is known or can be determined through reasonable means. *Mullane* held that publication was a constitutionally inadequate means to provide notice to beneficiaries of a common trust whose identities and addresses were known to the trustee, but that mailed notice would constitute "a serious effort" to inform the beneficiaries of the proceeding. 339 U.S. at 318-19 (recognizing that mail is "an efficient and inexpensive means of communication").[4] In

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[4]Indeed, the Court has required mailed notice even where the number of interested parties was staggering and the individual property interests at stake relatively small. In *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974), the Court held in a class action maintained under Fed. R. Civ. P. 23(b)(3) that "[i]ndividual notice must be sent to all class members whose names and addresses may

(continued...)

Greene v. Lindsey, 456 U.S. 444, 453-54 (1982), the Court found that posting a notice of forcible entry and detainer proceedings on the subject premises did not satisfy due process under the circumstances and suggested that "the mails provide an 'efficient and inexpensive means of communication' . . . upon which prudent men will ordinarily rely in the conduct of important affairs." *Id.* at 455. In *Mennonite*, the Court concluded that if a mortgagee of property subject to a tax sale "is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service." 462 U.S. at 798. *Mennonite* emphasized that "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition" to the tax sale if the interested party's "name and address are reasonably ascertainable." *Id.* at 800. In *Mennonite*, the mortgagee's address was not on file, but the Court "assume[d] that the mortgagee's address could have been ascertained by reasonably diligent efforts." *Id.* at 798 n.4. Most recently, the Court upheld the adequacy of mailed notice where it was sent by certified mail and actually received at the institution where the interested party was incarcerated. *Dusenbery*, 534 U.S. at 164-65. Thus, notice by mail can satisfy due process where,

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[4](...continued)
be ascertained through reasonable effort," even though there were 2.25 million such individuals, most of whom held small claims. The Court's decision was based on the requirements of Fed. R. Civ. P. 23(c)(2), but the Court found that its conclusion was reinforced by the Advisory Committee's Note showing that the Rule incorporates the *Mullane* due process standard. *Eisen*, 417 U.S. at 173-175; *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (where individual claims averaged only $100, due process required individual notice to each member of class).

under the circumstances, it is "reasonably certain to inform those affected." *Mullane*, 339 U.S. at 315.

Here, however, the State knew that the mailed notices had not informed Mr. Jones of anything, because the letters were returned to the State unopened. In circumstances where the sender knows that an attempt to provide notice has failed, this Court has found the notice inadequate.

In *Robinson v. Hanrahan*, 409 U.S. 38 (1972), for instance, the State initiated proceedings to forfeit Mr. Robinson's car while he was in jail awaiting trial. Instead of mailing the forfeiture notice to the jail, the State mailed the notice to Mr. Robinson's home address. *Id.* at 38. As a result, Mr. Robinson did not receive the notice until after the proceeding was over. *Id.* at 39. The Court held that the State had failed to comply with *Mullane* because "the State knew that [Mr. Robinson] was not at the address to which the notice was mailed." *Id.* at 40. The Court found that "[u]nder these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise [Mr. Robinson] of the pendency of the forfeiture proceedings." *Id.*

Likewise, in *Covey v. Town of Somers*, 351 U.S. 141, 147 (1956), the Court held that where the government knew that its attempts to provide notice had been ineffective, those attempts could not satisfy due process. In *Covey*, notice of a tax sale was provided to the property owner by mail, posting, and publication. *Id.* at 144. Even though the notice was received, the Court found that it was constitutionally inadequate under the circumstances because town officials knew that the property owner was mentally incompetent and lacked the capacity to understand the notice. *Id.* at 147.

Robinson and *Covey* establish that where the government *knows* that it has failed to provide effective notice, due process

requires further reasonable steps to inform an interested party before taking the property. Thus, *Robinson* and *Covey* demonstrate that once the notice to Mr. Jones was returned to the State, the State had a duty to attempt to notify Mr. Jones by other reasonable means. The Fourth Circuit recently applied *Mullane*, *Robinson*, and *Covey* in a situation where mailed notice was returned undelivered and came to the same conclusion: "[W]hen prompt return of an initial mailing makes clear that the original effort at notice has failed, the party charged with notice must make reasonable efforts to learn the correct address before constructive notice will be deemed sufficient." *Plemons v. Gale*, 396 F.3d 569, 576 (4th Cir. 2005).

B. The State Could Easily Have Provided Effective Notice To Mr. Jones.

Once the State's duty to take further reasonable steps to provide notice is triggered—as it was here—the question then is whether means were available to the State that would have been reasonably calculated to provide effective notice, and whether the burden of using such means is justified by the value of the property interest at stake. In this case, the undisputed facts demonstrate that the State could have easily provided effective notice to Mr. Jones, and given that Mr. Jones lost real property worth $80,000, the State cannot credibly argue that such means were not justified.

The State knew Mr. Jones was the owner of the property. JA 12. With very little effort, the State could have found Mr. Jones's correct mailing address after return of the notices sent to the Bryan Street address. Mr. Jones was not missing; he continued to live in the City of Little Rock, Pulaski County, Arkansas. JA 10. Mr. Jones's new address was listed in the then-current edition of the Little Rock telephone directory. *Id.*

The then-current Pulaski County voter registration rolls listed Mr. Jones at his new address. *Id.* Mr. Jones had used his new address when paying his state income taxes, and Mr. Jones had notified his long-time employer of his new mailing address. *Id.* In short, Mr. Jones was open about where he was staying, and anyone actually wanting to find Mr. Jones's correct address could have done so in minutes. Indeed, given the proliferation of Internet search engines and on-line directories, the State could have located Mr. Jones's correct address with just a few keystrokes. Alternatively, the State could have sought a current address through a credit bureau, the State's own driver's license and automobile registration records, or from utility companies. The State cannot credibly claim that use of such methods would have imposed an unreasonable burden, especially where Mr. Jones's correct address appeared in the State's own records.

After a notice letter is returned undelivered, "[w]hat additional efforts are reasonable will depend on the circumstances of the particular case." *United States v. Ritchie*, 342 F.3d 903, 911 (9th Cir. 2003). Thus, it is not possible to draft a definitive list of the means that must be employed in any given situation. However, many courts have suggested that the telephone directory and Internet searches that the State could have used to find Mr. Jones would have been useful to satisfy due process under similar circumstances. *See, e.g., Karkoukli's, Inc. v. Dohany*, 409 F.3d 279, 285 (6th Cir. 2005) (due process satisfied where, after return of mailed notice, government made significant efforts to ascertain a valid address by searching the phone book and the Internet); *Plemons*, 396 F.3d at 577 ("[C]hecking the local telephone directory may be reasonable in a given situation."); *Small v. United States*, 136 F.3d 1334, 1338 n.3 (D.C. Cir. 1998) (suggesting that, before giving up after the return of mailed notice, a reasonable person would try other ways of locating an interested party, such as

checking telephone listings); *United States v. Rodgers*, 108 F.3d 1247, 1252 (10th Cir. 1997) (telephone and utility company listings are among the sources the government can consider in determining where to send notice after initial mailing is returned undelivered); *United States v. 125.2 Acres of Land*, 732 F.2d 239, 242 (1st Cir. 1984) (due process not satisfied where "[p]ossessed of knowledge of [land owner's] name and town, and with access via the telephone book to his street address, the government could easily have notified him of the court proceeding by mail or other direct means"); *Montgomery v. Beneficial Consumer Disc. Co.*, No. 04-2114, 2005 WL 497776, at *6 (E.D. Pa. Mar. 2, 2005) (due process satisfied where settlement notice was sent to each class member's last known address and, where mail was returned undelivered, an Internet search was conducted and notice sent again). Similarly, many courts have required that the party charged with notice must at least examine governmental records that could provide current information, such as the state and county records that would have revealed Mr. Jones's correct address had they been checked in this case. *See, e.g., Plemons*, 396 F.3d at 578 (reasonable diligence required search of "all publicly available county records"); *Foehl v. United States*, 238 F.3d 474, 480 (3d Cir. 2001) (after return of mailed notice, government should have obtained correct address from "obvious sources" including the driver's license bureau); *Rodgers*, 108 F.3d at 1252 (due process required that government search its own records after mailed notice was returned).

In addition, the State could have provided notice to Mr. Jones by contacting the occupants of the house, either in person or by mail, or by posting a notice at the property. Such steps would not have been unduly burdensome. Either effort would have resulted in actual notice to Mr. Jones, as the facts of this case show. In the end, it was the unlawful detainer notice left

at the property that provided Mr. Jones his first actual notice of the sale of his house. Pet. App. 2a-3a; JA 5; R 11. Moreover, State personnel visited the property to perform negotiated sale research. JA 13; R 110. Dropping off a letter or posting a notice at that time would have been simple to do.

The Court has recognized that notice to the occupants or caretakers of real property can be an effective means of providing notice to the owner. *Mullane*, 339 U.S. at 316. In this case, Mrs. Jones was an occupant. Pet. App. 2a. Although she was not the record owner, she had lived in the Bryan Street house for nearly forty years. Thus, Mrs. Jones—not wanting to have to find another place to live—would have had a strong incentive to convey to Mr. Jones any notice indicating that the property was about to be lost. Mrs. Jones's interest in avoiding the forfeiture of her home belies respondents' suggestion that it was her "deliberate ignorance, or steadfast indifference" that led to the loss of the property. Respondents' Brief in Opposition to the Petition (BIO) at 14. Mrs. Jones should not be blamed for not claiming the certified letters. Nothing in the record suggests that Mrs. Jones had any knowledge of the contents of the letters or even who they were from. The letters were not addressed to Mrs. Jones. Rather, they were addressed solely to someone who had moved from the property seven years earlier and whose current address was readily ascertainable to anyone who desired to find it.

C. The State Did Not Fulfill Its Constitutional Duty, And Whether Mr. Jones Could Have Better Protected His Interest Is Irrelevant.

Although the argument was not made in the courts below, respondents asserted for the first time in their brief in opposition that the State, after the first mailed notice came back "unclaimed," had tried to find Mr. Jones by purchasing a title

report and conducting "negotiated sales research." BIO 12-13. Nothing in the record suggests that these efforts were part of an attempt to locate and then notify Mr. Jones. To the contrary, neither step was intended to ascertain Mr. Jones's correct mailing address after the State learned that its attempts to provide notice by mail had failed. First, the title search was designed to reveal changes in ownership or the existence of any liens against the property, but not to ascertain Mr. Jones's correct address. R 103. Indeed, nothing in the record suggests that the title company that prepared the report looked for Mr. Jones's address in any records other than those pertaining to the Bryan Street property. Second, the "negotiated sales research" involved a viewing of the Bryan Street address to verify that the property still existed as described in the deed records and to provide a description of the house and immediate vicinity, but it was not in any way calculated to discover Mr. Jones's correct address or to provide notice to Mr. Jones through the occupants. R 110. Thus, the title search and negotiated sales research did not fulfill the State's obligation to take reasonable steps to notify Mr. Jones.

Likewise, the publication of a tax sale notice in the newspaper was insufficient to satisfy due process. Publication is a means of providing constructive notice, and constructive notice satisfies due process only "where it is not reasonably possible or practicable to give more adequate warning." *Mullane*, 339 U.S. at 317; *accord Mennonite*, 462 U.S. at 798 & n.4 (constructive notice does not satisfy *Mullane* if the interested party's address "could have been ascertained by reasonably diligent efforts"); *Robinson*, 409 U.S. at 40 ("[N]otice by publication is not sufficient with respect to an individual whose name and address are known or easily ascertainable."); *Schroeder v. City of New York*, 371 U.S. 208, 212-13 (1962) (same). In this case, because Mr. Jones's correct

address was readily available with almost no burden on the State, constructive notice by publication was insufficient.

Finally, in concluding that due process requires no further effort to locate the correct address of an interested party after the initial notice is returned, the court below erred by relying on an Arkansas statute that obligates a property owner to notify the tax collector of any change of address. Pet App. 10a (citing Ark. Code Ann. § 26-35-705). This Court has held that "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation" to provide effective notice. *Mennonite*, 462 U.S. at 799. Thus, the State's failure to provide adequate notice to Mr. Jones cannot be excused by reference to a state law that purports to shift the burden to the taxpayer.

CONCLUSION

Because the State failed to provide Mr. Jones constitutionally adequate notice before taking his house, the decision below should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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In The
Supreme Court of the United States

GARY KENT JONES,

Petitioner,

v.

LINDA K. FLOWERS, AND MARK WILCOX, COMMISSIONER OF STATE LANDS,

Respondents.

On Writ Of Certiorari To The Arkansas Supreme Court

BRIEF FOR RESPONDENT LINDA K. FLOWERS

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QUESTION PRESENTED

After constructive notice and multiple attempts at actual mailed notice of a tax sale date or right to redeem real property are returned unclaimed after being mailed to the last known address of the taxpayer, does Due Process require the government to take heroic additional steps to locate an owner, above and beyond statutory requirements, when the taxpayer has never complied with nor challenged the statute at issue?

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STATEMENT OF THE CASE

On February 24, 2000, Petitioner Gary K. Jones and his wife, Jean, forfeit to the State of Arkansas, their real property at 717 N. Bryan Street, in Little Rock, Pulaski County, Arkansas for their failure to pay real property taxes in 1997, 1998, 1999, (and all subsequent years). Joint Appendix ("JA") at 12. The Pulaski County Collector ("Collector"), certified this forfeiture to Respondent Commissioner of State Lands, which forfeiture occurred by operation of state law, Ark. Code. Ann. Sec. 26-37-101 (1997 Supp.). Record ("R.") 96 (Exhibit 1 to Affidavit of Patricia Lah). Title to the property vested with the State of Arkansas on February 24, 2000, in care of the Commissioner of State Lands, who is charged with collection of the past due taxes, and sale of the real property.

Prior to the Collector's certification of forfeiture to Respondent Commissioner of State Lands, the Collector published on January 18, 2000, in the state-wide daily newspaper, the Arkansas Democrat-Gazette, redemption information, with a notice that property not redeemed timely would be forfeit to the State in accordance with Ark. Code Ann. Sec. 26-37-102. R. 96. The Collector also caused the Jones property to be included in a list of delinquent lands, and entered in a permanent record, appropriately labeled, open to inspection by the public, and further stating what newspaper the notice of delinquent land was published and the dates of publication in accordance with Ark. Code Ann. Sec. 26-37-106. R. 96.

Additionally, prior to certification to the Commissioner of State Lands, the Pulaski County Assessor ("Assessor") verified the assessment of taxes for the 1997 tax year, and further verified the name and last known address of the

owner of record, Gary K. Jones, in accordance with Ark. Code. Ann. Sec. 26-37-103. R. 96.

Finally, prior to the forfeiture in February of 2000, the Pulaski County Clerk and Recorder ("Recorder") certified that the Assessor had recorded the list of parcels assessed for taxation as real property. R. 96. This record is evidence of the facts contained in the list and certificate in accordance with Ark. Code Ann. Sec. 26-37-106, and was appropriately certified and made part of the record in the trial court. R. 96.

Petitioner Jones did not challenge at any point the February 24, 2000, forfeiture of the real property to the State of Arkansas by operation of law. Jones challenged only notice of opportunity to redeem the land.

In order to carry out his statutory and state constitutional duties to collect past due taxes, or to sell forfeit lands, Respondent Commissioner of State Lands notified Mr. Jones of Jones' right to redeem the property from the State of Arkansas. In March of 2000, Defendant Commissioner provided appropriate written notice of the right to redeem, a proposed Petition to Redeem, and instructions, by certified mail, to Petitioner Jones. JA 12. This notice told of the potential sale of the real property at public auction on or about April 17, 2002, two years in advance, in accordance with the statutory scheme. R. 99-101.

The March 2000 notice was mailed to the real property address, 717 North Bryan, Little Rock, which is the subject of the Petition. R. 102. Mrs. Jean Jones continued to live at this address through the hearing date in 2004. R. 29; Jones' Addendum to Arkansas Supreme Court Brief at 33 ("Jones Add."); R. 46 (Mrs. Jones' Affidavit). The 717 North Bryan address was also the notification address of

record as certified to the Land Commissioner by the Pulaski County Assessor. R. 96.

After three attempted deliveries, the March 2000, certified mail notice was returned "unclaimed" to the Commissioner. JA 12; R. 102. There was no indication on the face of the letter that a forwarding order for Mr. Jones had expired with the post office. *Id.* There was no indication on the face of the letter that it was undeliverable. *Id.*

Neither Mr. Jones, nor his wife, had notified any appropriate County or State taxing authorities or taxing entities that either of them had a new mailing address.

After the first certified mail notice was returned to the Commissioner of State Lands unclaimed, on February 14, 2002, the Commissioner purchased a title report, which showed Gary K. Jones as the record owner prior to forfeiture. JA 12; R. 103. The title report also showed no change in record ownership information since the February 24, 2000, forfeiture of the real property to the State of Arkansas. *Id.*

On April 1, 2002, the Commissioner published notice of Jones' right to redeem, the sale date, and other information, in a newspaper of general circulation in Pulaski County. JA 13; R. 106, 108. No purchasers came forward at the April 2002 auction, and the property became subject to a negotiated sale by operation of law, which law Jones does not challenge. JA 13.

Respondent Linda Flowers made a purchase offer in February, 2003. JA 13, R. 109. The Commissioner subsequently conducted additional research into the property. JA 13; R. 110. The negotiated sales research indicated that the real property existed as described, had the proper legal and street addresses, showed that title records indicated

Gary Jones remained as the most recent owner prior to forfeiture, had not transferred or attempted to transfer title, and finally that notice information should continue to be sent to Mr. Jones at the property address, 717 N. Bryan Street. *Id.* The Negotiated Sales Research also indicated that "the property does appear to be vacant." R. 100.

As Mr. Jones said in his Brief to the Arkansas Supreme Court, "the State actually conducted extensive pre-sale research on the Joneses' property." Jones' opening Brief and Addendum to Arkansas Supreme Court, at 9.

Respondent Land Commissioner subsequently mailed, by certified mail, notice of the pending negotiated sale to Mr. Jones at his last known address, and his address of record, the property address where Mrs. Jones lived, 717 N. Bryan. JA 13; R. 111-112. After three attempts at delivery, on February 20, March 12, and March 17, 2003, this notice was also returned unclaimed. JA 13; R. 112. There was no indication on the face of the letter that a forwarding order for Mr. Jones had expired with the post office. *Id.* There was no indication on the face of the letter that it as undeliverable. *Id.*

The Commissioner approved Flowers' offer to purchase the property at 717 N. Bryan, on April 11, 2003. R. 109. The Arkansas Attorney General, Mike Beebe, subsequently approved Flowers' offer to purchase the property at 717 N. Bryan on April 23, 2003. *Id.* Flowers purchased the property, and the Commissioner issued a Limited Warranty Deed for Forfeited Property Sold on May 28, 2003. JA 14; R. 115.

Flowers subsequently moved to evict any occupants, by notice delivered to the property address by a process server. R. 11. Mr. Jones promptly received that notice, as he admitted in his complaint, and within days, sued to

have the sale and deed set aside solely for Land Commissioner's failure to give Jones "actual notice" of the proposed sale and right to redeem. R. 1. Jones did not state, specify, or assert a general challenge to the statutory scheme. R. 1. Flowers counterclaimed. R. 8. Mr. Jones then amended his pleadings, by adding Mrs. Jean L. Jones, his wife, as an additional Plaintiff, but without changing his legal claims that the constitution required Land Commissioner to provide the plaintiffs "actual notice" of the sale and right to redeem. R. 19. Mr. and Mrs. Jones again did not attack the statutory scheme as a whole in their Amended Complaint. *Id.*

In order to avail himself of certain legal arguments and putative statutory protections (R. 31), Petitioner Jones has systematically claimed, in this litigation and on appeal, that the real property at issue is his "homestead," i.e., the place where he lived. R. 1 ("his home"); R. 26 ("homestead assertion"); R. 27 (argument concerning their "homestead"); R. 28 (Jones' October 15, 2003, Affidavit stating it is "homestead" and "my homestead" with no indication that Mr. Jones did not live on the real property); R. 29 (Mrs. Jones' Affidavit concerning "our homestead"). It was not until November 24, 2003, that Mr. Jones first made his contrary assertion in the proceedings below, that is, that he did not live at 717 N. Bryan Street. JA 9-10. Mr. Jones did not amend his pleadings in any way to reflect this change. JA 1-2 (summary of docket entries).

It is not now disputed, and has not been disputed, that Jones failed to file with the Pulaski County Recorder (and Clerk), the Pulaski County Assessor, and the Pulaski County Treasurer, any notice of a change in his mailing address for notices of taxes due on the real property. The notices at issue were mailed to Mr. Jones' last known address (717 N. Bryan). Mrs. Jean Jones continued to live

in the home on N. Bryan Street, through the hearing date in the trial court, which is also the same location where Respondent Commissioner repeatedly mailed the notices at issue herein. R. 46. It was not disputed that Mrs. Jean Jones was at all times relevant to this case, the wife of Petitioner Gary K. Jones.

The trial court granted summary judgment to Flowers and the Commissioner, confirming the sale, and denied Jones' motion for summary judgment, dismissing the case.

Mr. Jones subsequently admitted, on appeal to the Arkansas Supreme Court, that "actual notice" of the sale date and opportunity to redeem was not required after all. Jones' opening Brief and Addendum to Arkansas Supreme Court, at 13. The Arkansas Supreme Court unanimously affirmed, without oral argument, stating, *inter alia*, that Jones, in the trial court, ignored an applicable statute that required the property owner to notify the tax collector of his correct address. Pet. App. 10a. Rehearing in the Arkansas Supreme Court was denied, in a one-line Order, without argument.

SUMMARY OF THE ARGUMENT

The decision below should be affirmed, and this appeal dismissed, because Mr. Jones failed to satisfy Arkansas' long held rules governing preservation of issues for appeal. An appellant must bring to the Arkansas Supreme Court an argument raised and fully developed in the trial court, in order to preserve it for appeal. *Raymond v. State*, 354 Ark. 157, 118 S.W.3d 567, 571 (2003). If a particular theory was not presented to the trial court, the

theory will not be reached on appeal. *Id.* (*citing*, *Ouachita Wilderness Institute v. Mergen*, 329 Ark. 405, 947 S.W.2d 780 (1997)). This Court should assume that the Arkansas Court did not rule on the issue for want of proper presentation to the state court. *Webb v. Webb*, 451 U.S. 494, 495 (1981) (citations omitted).

Here, Mr. Jones has failed to present his challenge properly to the Arkansas Court. It is undisputed that Mr. Jones did not raise any challenge to Ark. Code Ann. Sec. 26-35-705 in the trial court below; nor did he respond in any way to arguments timely made by Respondent Flowers and Respondent Commissioner in the trial court. Section 26-35-705 provides that the taxpayer, Jones, has an obligation to furnish the correct address to the taxing authorities in the event that the taxpayer changes address. Jones did not draw into question the constitutionality of Section 26-35-705, and consequently cannot prevail now.

ARGUMENT

I. PETITIONER HAS NOT PROPERLY PRESERVED FOR APPEAL THE ISSUES RAISED IN HIS PETITION.

The question presented is whether Due Process requires heroic additional steps to locate Mr. Jones when he failed to make a predicate challenge to the applicable statute in the trial court below. It is not enough to draw a statute into question by disputing an act done – or not done – by virtue of such statute. *See, Baltimore & Potomac R. Co. v. Hopkins*, 130 U.S. 210, 224-26 (1889). Jones had to fully develop his arguments in both the trial court and the Arkansas Supreme Court. This he has not done.